IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) No.1292 OF 2007

1) Smt Shobha Raghunath Patil & ors..Appellants

vs

1) Gulab G.Wayal & anr .. Respondents

Mr.S.G.Thorat for Appellants
Mr.S.M.Dange for Respondent no.2
CORAM : A.S.OKA, J

DATED : 20th December, 2007

ORAL JUDGMENT

1. Heard advocates appearing for the appellants and advocate appearing for the 2nd respondent.

2. Admit.

3. Considering the limited controversy involved, the appeal is taken up for final disposal at the admission stage. The respondents have not preferred any appeal against the impugned judgment and award which is passed on 14th July, 2006 and in fact the entire amount due and payable as per the impugned award has been deposited by the 2nd respondent with the concerned Tribunal. 4. The appellants are the claimants in a Claim Petition under section 166 of the Motor Vehicles Act, 1988. The Claim Petition was filed on account of the death of the husband of the Ist appellant in a motor accident. The 2nd appellant is the minor daughter of the deceased. By the impugned Judgment and award dated 14th July, 2006 the Claim Petition was partly allowed by granting compensation of Rs.8,50,000/- together with interest thereon at the

rate of 9% p.a. from the date of filing of the Claim Petition till the deposit of the amount. The tribunal however, denied interest for the period from 31st January 2004 to 5th December, 2005 on the ground that on 31st January, 2004 the Claim Petition was dismissed for default and was restored on 5th December, 2005.

5. The only limited challenge in this appeal is to that part of the impugned award by which interest has been denied for the aforesaid period. The submission of the learned advocate for the appellants is that the petition was dismissed on the ground that the appellants were not present though their advocate was present. The hearing of application for the restoration was inordinately delayed as the 2nd respondent insurance company went on applying for adjournment from time to time. He submitted there was no ground to deny interest as there was no negligence on the part of the appellants. Submissions of the learned advocate for the 2nd respondent is that the 2nd respondent cannot be blamed if the Claim Petition was dismissed as appellants admittedly remained absent. He submitted that considering the fact that Claim Petition was dismissed on the ground of default of the appellants, the tribunal was fully justified in denying interest for the period starting from the date of dismissal and ending with the date of order of restoration. He submitted that no case is made out for interference.

6. I have given careful consideration to the submissions. Claim Petition filed by the appellants was dismissed in default on 31st January, 2004. On 27th January, 2004 when Claim Petition was listed for hearing, an application was made on behalf of the appellants for an adjournment on the ground that the Ist appellant was sick and was unable to attend the Court. The learned Member of the tribunal granted adjournment only till 31st January, 2004. On 31st January, 2004 an application for adjournment was made by the advocate for the appellants on the same ground. The said application was rejected and the Claim Petition was dismissed in default by the learned Member on the ground that the Claim Petition was an old petition of the year 1999.

7. An application for restoration being Misc. Petition No.8 of 2004 was filed bythe appellants on 23rd February 2004. Notice was issued on the said application which was made returnable on 29th July, 2004. A perusal of the roznama of the application for restoration shows that on 29th July 2004, 30th August, 2004, 9th September 2004, and 4th October 2004 an adjournment was sought on behalf the 2nd respondent for grant of time to file a reply. On 4th October, 2004 the application for restoration was adjourned to 20th November 2004 for filing reply by the 2nd respondent On 20th November 2004, the 2nd respondent again applied for an adjournment. On 13th December 2004, the 2nd respondent again applied for adjournment. On the

next date i.e on 5th January 2005 learned Member of the tribunal passed an order on the restoration application that the same will proceed without reply of the 2nd respondent. The application for restoration was filed by the appellants within the stipulated period of limitation of 30 days. Though the 2nd respondent appeared in the said application on 29th April, 2004, the 2nd respondent went on applying for time to file reply till 13th December 2004. On 13th December, 2004 time was granted till 5th January, 2005. The roznama of the restoration application shows that on 24th January, 2005, 14th March 2005 and 13th April, 2005 advocate for respondent no.2 was absent. The hearing of the application was further delayed as the Presiding Officer was either absent or was transferred. Ultimately on 19th November, 2005 order was passed allowing the restoration application subject to payment of costs of Rs.200/- to the 2nd respondent. Hearing of the application was further delayed as the appellants were called upon to lead evidence. When an application for restoration of the Claim Petition arising out of a fatal accident was filed within the stipulated period of limitation, it is surprising that the learned Member of the Tribunal compelled the appellants to lead evidence for making out sufficient cause for restoration. Such a technical approach on the part of the tribunal was not at all warranted.

8. The 2nd respondent could have always given consent or could have left it to the learned Member

of the tribunal. However, hearing of the application for restoration was delayed for such a long time from the end of July, 2004 only because the 2nd respondent went on applying for adjournment. This was a case where the appellants had shown diligence by applying within the stipulated period of limitation.

9. Considering the aforesaid factual aspects, there may be some justification in denying interest up to the end of July 2004 when the 2nd respondent appeared for the first time before the tribunal in the restoration application. However, there was no justification for denying interest for further period as the appellants cannot be blamed for further delay and to some extent the blame for delay has to be shared by the 2nd respondent.

Hence, I pass the following order :

O R D E R

(i) The impugned award is modified. The appellants are entitled to interest on compensation amount for the period between 1st August, 2004 till 5th December 2005. However, they will not be entitled to interest for period between 31st January 2004 to 31st July, 2004. Interest will be at the rate of 9 % p.a.

(ii) Appeal is partly allowed in above terms with no order as to costs.

(iii) The 2nd respondent is granted time of 3 months to deposit the enhanced amount.

(A.S.Oka, J)